

Town of Union PLAN COMMISSION MEETING February 25, 2010

The Town of Union Plan Commission monthly meeting was called to order at 7:00 p.m. on Thursday, February 25, 2010 at the Eager Free Public Library, 39 W. Main St., Evansville, WI by Chairman Alvin Francis. Members present included Chairman Francis, Vice-Chairman Doug Zweizig, Renee Exum, Eric Larsen, Dave Pestor, Doug Lee, Town Board Chairman Kendall Schneider, Supervisors George Franklin and Don Krajeck, Clerk Regina Ylvisaker, Building Inspector Bob Fahey, and Town Attorney Matt Dregne. Plan Commission member Kim Gruebling was absent.

Approve January 28, 2010 Plan Commission Minutes

Motion to approve January 28, 2010 meeting minutes as written made by Doug Zweizig. Second by Eric Larsen.

Zweizig requested that agendas and minutes include a revision date, as they are revised on occasion and a date would help avoid confusion.

Motion carried by unanimous voice vote.

Public Comment (10 minutes max/issue)

Zweizig would like a status update on the MET tower; he has heard that Magnolia is taking theirs down. It is unclear who would be responsible for providing the update.

Zweizig also reviewed an article from the February 12, 2010 issue of the Janesville Gazette regarding hops production. He feels this concept reinforces our goal of economic development within the Town. Renee Exum would like to consider strategies for promoting economic development, including marketing.

Audience w/ Davis Legal Counsel Regarding Conceptual Review of Land Division Proposal

Attorney Peter Conrad from Axley Brynleson was in attendance representing Davis'. Conrad explained that his clients would like to know what they can do to put property into saleable condition. At present, their idea is to separate off 8 acres with their existing residence from the approximately 53 acre parcel, leaving approximately 45 acres with the hunt club building. Conrad reviewed the November 2009 Plan Commission meeting minutes at which Buck Sweeney discussed the issue, and believes this seems consistent with what the Plan Commission had talked about at that time. Conrad requested clarification on the deed restriction that was mentioned in November. The existing parcel is an odd shape, runs along Spring Creek, and is not really good tillable crop land. The Davis' would like to be able to offer a possible buyer the option of converting the hunt club into a residence; they understand that a deed restriction would likely restrict further residential development, and further land divisions. Exum questioned why eight acres was chosen for the separated parcel. Conrad explained that the acreage was not a magic number, but would allow the house to remain with the tree farm and create a square parcel. Matt Dregne asked if the zoning of the 8 acre parcel would then be changed to A3; it would. Conrad questioned if the purchaser of the 45

acre parcel would be allowed to convert the hunt club building to residence. They would, as A1 zoning would allow one house on the parcel. Dregne questioned if a purchaser could build a separate home and keep the hunt club building intact. It appears they could, as one residence would be allowed on the parcel.

A conversion fee would also be applied for converting the 8 acre parcel out of A1 zoning, which is another reason the Davis' want to be sure they are heading in the right direction. Dregne noted that one issue that will be relevant is that of consistency under the comprehensive planning statute which became effective on January 1, 2010. Basically, the Town's actions must be consistent with their comp plan, including zoning ordinances and changes in zoning. However, the question becomes how to evaluate consistency? Current zoning map shows the Davis' parcel is zoned A1 and in an ag preservation area. The Hawkins parcel, later on the agenda, will be the same. The narrative of the Town's comp plan does not discuss the significance of being zoned A1. Is the Town unrestricted from changing the zoning as long as it is consistent with future land use map? How do we decide if the change is consistent with ag land preservation? Conrad questioned if the land use map is to be viewed as a guidance document or set in stone. Dregne believes the Town's decisions could be subject to review by a court and a judge could be the one deciding if their decisions are consistent with their comp plan. Thus far, Dregne has advised his clients that in situations where the decision is a close call, they should be clear on explaining why they have reached the decision they've made, and see what happens with the courts. Zweizig noted that currently there is a single residence on the property, and the Town is being asked to allow for two residences on a property once it is divided. Doug Lee questioned if past practice comes into play at all with decision making. Dregne stated no, the "consistency" referenced in the statute does not relate to past practice but to the comp plan. Exum does not believe that the intent of ag preservation was to keep land strictly A1; farming operations can be located on A2 or A3 parcels. Larsen believes the concept presented fits the A3 zoning requirements well. Alvin Francis was of the opinion that the proposal is acceptable. Zweizig noted that an ag preservation area holds a higher standard for decision making with regard to land divisions and development; there are other areas within the Town where development is more suitable. The Plan Commission knew there would be pressure on some ag preservation land for development but the pressure should not change our decisions. Larsen thinks the idea of converting the hunt club to a residence is an issue; it opens up other people converting barns, etc into houses and splitting them off. Conrad believes the hunt club building has its own septic, but may share a well with the house. Exum suggested deed restricting the property for no more residential structures. Zweizig felt that overall, he doesn't know how it is in the Town's interest or consistent with our comp plan to approve such a division. Larsen stated that it could be argued that splitting land for sale to other farmers is not in the Town's interest either, but it is approved. Zweizig feels that it is a form of development of property if the building (hunt club) can be turned into a residence.

Discussion: Working Lands/Farmland Preservation Initiatives

A meeting is planned for March 16, 2010 at the Evansville Fire Department with representatives from the Rock County Planning Department to discuss the issue. Meeting will begin at 6:30 pm.

Francis thinks there is potential to upset our farmland preservation map with the changes resulting from the new initiatives. Tom Sweeney was in attendance, and explained that the program was originally started in late 1970s, and became stagnant.

Lots of changes have happened since then, including the development of comp plans, use value, and collapsing enrollment in the program. The program had 1,300 participants when it started, last year only 753 participated, mainly because of use value fees. Sweeney stated that the reason why the State has not gone after rezones for fees is that under the zoning authority they didn't have a mechanism available to collect monies. As part of the use value fee program, a conversion fee is established that is paid to the county treasurer. With the new programs, a fee will be established, about \$1,000 per acre, which will be collected directly by the Town.

Public Hearing: Review and action on request made by Dustin Hawkins, 13775 Chestnut Drive, Eden Prairie, MN for a land division and zoning change to separate off home and 5 acres from the existing 46 acre parcel located in the SW ¼, SW ¼ of Section 18, parcel #6-20-147. The current parcel is zoned A-1; the resulting 5 acre parcel would be rezoned A-3, and the parent parcel would retain A-1 zoning.

Public hearing opened at 7:50 pm.

Steve Lathrop, from Combs and Associates, was in attendance representing the requestors. The proposal is to split off 5 acres and home, with the remainder of the land remaining A1. Dustin Hawkins was in attendance and stated that he spoke to the Plan Commission regarding the issue last spring or summer, and at that time the Plan Commission told him that in keeping with the smart growth plan he would have to divide off over 3 acres. He too wants to keep as much land in ag production as possible, as that is everyone's goal. Francis questioned why 5 acres was chosen as the size for the lot with the home. Hawkins stated that when he marketed the home, he offered it with the entire 46 acres or with as little as 3 acres, and 5 acres is what the buyers settled on. The purchasers were in attendance, and stated that the intended use of the 5 acres was just for themselves and their dog, and they have no intentions of raising large animals. Hawkins stated that the remainder of the land is rented out to farmers, and he has talked to local farmers about selling the land to them for farming, not for development. Initially, Hawkins built the house and planned on renting out remainder of land, and then had to relocate.

Jeff McNeeley: Rollin Green Dairy Farm: wants to be sure that remaining acreage is deed restricted so that there are no more houses built. They do not want any more neighbors and want as much land to stay in ag use as possible.

Sharon Franklin called the Rock County Register of Deeds, who clarified that there was currently no deed restriction on the parcel. Hawkins stated that he too checked on any deed restrictions before he bought the parcel from Shotliff in 1998, and there was no restriction on it then. At the time, Hawkins stated he was informed then there would be no development of the land allowed, and only one home would be permitted on the parcel. Building Inspector Bob Fahey stated that when the parcel was purchased from Shotliff, it didn't go through the Town for any approvals as it was over 35 acres, was a separate parcel, and therefore no land division was required.

Francis read in a letter regarding the request received from Laura Meixelsperger:

Dear Plan Commission Members,

In regards to Dustin Hawkins I am opposed to extending more than 2-3 acres already possibly approved for the sale of the house on Hawkins property, and keeping as much farmland or wetland as the remaining parent parcel.

There are already 6 houses at the end of W. Emery Rd. Do we really need to turn this end of the road into more of a subdivision.

Hawkins has since moved out of state as you know, and could care less about preserving any farmland on Emery Rd. My vote is no to 5 acres and no building site on the again split remaining parent parcel.

Is it possible to keep any open space between houses any more? Let's develop the other end of Emery Rd. and see if any neighbors or farmers are interested.

An email received from Sarah Blockhan regarding the request was also read in:

It is my understanding that the land that Mr. Hawkins is trying to change the zoning on was sold as a whole and that it was not to be split up when he bought it. So now he is trying to do just that as if the rule doesn't apply to him. Our township has rules in it for a reason and I think we should stand by the rule. Maybe if he did a little landscaping, like real grass and maybe a shrub or two, he might actually find a buyer for the "whole" property!

*Thank you,
Sarah Blockhan
18309 W Emery Rd*

Hawkins stated that he is concerned with the use of the farmland in the future, and is willing to deed restrict remaining 41 acres in an effort to preserve the farmland. More land will not be taken away for a house, as it is already there.

Public hearing closed at 8:04 pm.

Lee thinks the house sits on the best piece of the parcel, and that the house should only be split with 3 acres. Larsen agrees, as does Dave Pestor. Zweizig noted the historic property note the application; Hawkins stated he was told there was a cheese factory on the property years ago, but there is no sign of it now. It was apparently located close to where the house sits now.

Zweizig noted that the check list/scoring sheets are to refer to the parcel being developed, but some of the answers on the scoring sheet refer to the 5 acres and some refer to the entire 46. For the surveyor's future reference when completing the forms, the answers should refer only to the parcel being developed, i.e. 5 acres.

Exum proposed going through the 4 findings that are suggested as part of the farmland preservation program for rezoning land out of A1:

- The rezoned land is better suited for a use not allowed in the FP Zoning District
- Rezoning is consistent with the comp plan
- Rezoning is consistent with county's certified FP Plan

- Rezoning will not substantially impair or limit current or future agricultural use of surrounding ag land

The rezoned land is better suited for use not allowed in the farmland preservation zoning district? Agreed by all: Yes.

Is rezoning consistent with comp plan? Exum thinks it is not consistent the way it is currently proposed, but would be with a deed restriction on the remaining 41 acres. Zweizig believes that reducing the size of the parcel from 5 acres to 3 would make it more consistent with the comp plan. as well as reducing size of parcel.

Is rezoning consistent with the county's farmland preservation plan? On its face it is not, but with a deed restriction possibly. Zweizig believes that the working lands program would suggest a conditional use permit instead of rezoning. However, this provision is not in our ordinance and is therefore not an option at this time.

Zweizig felt that by splitting the parcels, there is the potential for conflict with the future use of the land. He also questioned whether the division is in the Town's interest. Lee noted that a division with a deed restriction is a better option than potential options if it is split without a deed restriction. Larsen explained that without the deed restriction, anything that is permitted in A1 zoning could be done on the 41 acre parcel, including building an additional residence without Town approval being required. Pestor believes that the house is already there, and the Town should deal with it as it is and put a deed restriction on the 41 acres of farmland. Then there is definitely no more development on the 41 acres. Additionally, Pestor thinks that 3 acres is a more appropriate size for the lot with the house. Francis is only concerned with consistency with surrounding parcels.

It was agreed that Yes, the request is consistent with county's farmland preservation plan.

Rezoning will not substantially impair or limit current or future agricultural use of surrounding ag land? As the house is already there, it is unlikely that it would. A statement could be included on the CSM or otherwise stating that the purchaser is aware that they are buying property that is surrounded by farmland; the only purpose of such language would be to protect the Town from people complaining about farm operations.

Zweizig still sees no benefit to the Town to approve the split; Larsen doesn't see how it doesn't benefit the Town. George Franklin noted that A3 parcels are taxed at a higher rate than A1 parcels, and therefore generate more tax dollars for the Town. This is one consideration regarding benefits to the Town.

Francis stated he would agree to a 3 acre separation and deed restricting the remaining acreage. Larsen thinks a deed restriction is more of a guarantee that the land will remain ag, otherwise there is no guarantee, and this could be viewed as making the approval in the Town's best interest as it would be harder for the land to be developed.

If the request is rejected now and they reapply with three acres, will they have to pay the fee again? Yes. If the request is tabled until next month and the applicant requests in writing to extend the approval time past the required 90 days, then the fees would not need to be paid again.

Motion to table the request until the March Plan Commission meeting with the expectation that the applicant will return with an amended application made by Eric Larsen. Second by Dave Pestor.

Roll call: Alvin Francis – Yes; Doug Zweizig – Yes; Renee Exum – Yes; Eric Larsen – Yes; Dave Pestor – Yes; Doug Lee – Yes. Motion carried 6-0.

Motion to adjourn made by Eric Larsen. Second by Doug Lee. Motion carried by unanimous voice vote. Meeting adjourned at 9:17 p.m.

Respectfully submitted by Clerk Regina Ylvisaker.

Note: minutes are considered draft until reviewed and approved by the Town Board at a properly noticed meeting.

3.22.10